IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.86 OF 2004

Bharat J. Hodiwala .. Appellant

vs.

Bombay Municipal Corporation ..Respondent.

Mr. Pande i/b. Pandya & Co, Advocate for the Appellant.

Mrs.Geeta Joglekar, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. The Respondent Corporation has filed affidavit of Zainulabiddin Jafar Nakahwa. In paragraph No.3 of the Affidavit it is stated thus:

> "I say that the Appellant had also filed another Suit No.2048 of 1999 for following due process of law wherein he has shown the suit stall is situated on the property of Maratha Bhuvan which is far away from the Planet Industrial Co-operative Housing Society Ltd. I say that Notice of Motion was dismissed by order dated 8.12.2004 by the Hon'ble City Civil Court and the Respondents therefore took action of demolition on 10.1.2005. I crave leave to

> refer to and rely upon the photographs prior to demolition, during the demolition as and when produced."

Statement made in the said affidavit is accepted. In view of the said statement and in view of the prayer made in the Notice of Motion, nothing survives in the Appeal from Order.

2. Hence Appeal from Order is dismissed. No order as to costs.

. All contentions of the parties on merits of the suit are kept expressly open.

(A.S.Oka,J.)